IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

NARAYAN LAL Vs. LRS. OF MOHAN DAS & ORS.

CIVIL SECOND APPEAL No. 151 of 2006

Date of Judgment : 29th August, 2006

PRESENT

HON'BLE SHRI N P GUPTA,J.

Mr. NM LODHA, for the appellant.

Mr. SN VYAS, for the respondent.

BY THE COURT:

Heard learned counsel for the appellant, and the learned counsel for caveator.

By the impugned judgements, and decrees, the two learned courts below have decreed the suit for eviction from the suit premises on the ground of default. It is contended by the learned counsel for the appellant that the decree has been passed treating the appellant as second defaulter, while before filing the present suit, no suit for eviction had ever been filed, and thus there is no question of any second default. The other submission made is, that the appellant had regularly deposited the monthly

rent after determined amount was deposited, and the learned courts below were in error in decreeing the suit, simply because, in view of the learned court below, the monthly rent was deposited at the rate of Rs. 150/-, while it should have been deposited at the rate of Rs. 151/-. It was also submitted, that in any case, when the appellant had deposited the rent at the rate of Rs. 150/-, it could not be assumed, that the appellant desired to deposit lesser rent, rather it was an act of bonafide mistake on the part of lawyer concerned, and therefore, the application filed by the appellant on 20.9.2003 should not have been rejected vide order dt. 13.5.2005, and therefore, also the decree is liable to be set aside.

On the other hand, learned counsel for the caveator has supported the impugned judgments.

It may be noticed here, that vide order dt. 26.4.2006, record of the learned courts below was ordered to be requisitioned, and the same has been received. I have perused the record.

In this case the suit was filed on 15.9.1995, interalia on the ground of default, and subletting, though ground of subletting has been negatived by both the learned courts below, i.e. the learned lower Appellate Court by rejecting the cross appeal. The provisional determination

of the rent, under Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, hereafter referred to as 'the Act', was made by the learned trial court vide order dt. 24.9.1998, and an amount of Rs. 12651/- was determined. Then the appellant filed application for extension of time, whereupon, vide order dt. 9.10.1998, the time was extended upto 9.12.1998. A look at the plaint shows, that according to the plaintiff, monthly rent was Rs. 151/-, and the rent was claimed to be in arrears from 13.8.1992, and arrear of Rs. 5587/- was claimed. In that background, the rent determined was Rs. 12651/-, obviously it was not a round figure which it should have been, had the monthly rent been Rs. 150/-, as claimed by the defendant. This is one aspect of the matter. The other aspect is, that the order of determination has neither been challenged, nor is under challenge before me; and in the determination order, the rent has been determined at a monthly rate of Rs. 151/-, for a period of 71 months, adding Rs. 1930/- as interest. In that view of the matter, now it cannot be said to be open to the appellant, to contend that monthly rent was Rs. 150/-, and not Rs. 151/-.

Now, taking up the contentions of the learned counsel for the appellant, true it is, that the learned trial court has held the appellant to be second defaulter, true it also is, that admittedly no suit has been filed earlier against the appellant for eviction on the ground of

default, wherein the appellant may have been given the benefit of being the first defaulter. But then, that is not the end of the matter; inasmuch as, the learned lower Appellate Court has set the things right, by observing that the decree should not have been passed holding the defendant to be second defaulter, but should have been passed on the ground of being first defaulter, and being not entitled to the benefit of Section 13(6) of the Act. Admittedly, the suit is based on default, and admittedly, the appellant has not complied with the requirement of Section 13(4) of the Act, inasmuch as, the monthly rent deposited is deficit. That being the position, the learned lower Appellate Court has rightly found, that in view of the judgment of this Court in Ramdev Kajaria Vs. Vijay Narayan reported in 2005 A.I.H.C.-3602, the appellant is not entitled to the benefit of Section 13(6) of the Act. True it is, that the plaintiff filed an application for striking out the defence, on 5.9.2003, true it also is, that no order was passed on that application. However, may be that on that count the defence may not be struck off, but then, the question still remains, as to whether the defendant is entitled to the benefit of Section 13(6) of the Act, or not, and in my view, the learned lower Appellate Court, by relying upon the judgment in Ramdev Kajaria's case, has rightly held the defendant to be not entitled to the benefit.

So far as the contention about the error on the part of the learned trial court, in dismissing the application dt. 20.9.2003, vide order dt. 13.5.2005, and the error having occurred on account of bonafide mistake of the lawyer is concerned, in my view, the contention cannot be accepted. A look at the application dt. 20.9.2003 shows, that all that has been pleaded is, that round figure of Rs. 150/- was deposited instead of 151/- on account of bonafide mistake, and being under impression of rent being Rs.150/-, and this mistake occurred because the Advocate informed the monthly rent to be Rs. 150/-. This application was replied by the defendant, contending that determination was made by calculating rent at the rate of Rs. 151/-, and the defendant and his counsel had full knowledge about the monthly rent being Rs. 151/-, and thus there is no bonafide mistake at all. The learned trial court has found in the order dt. 13.5.2005, that in view of the judgment of Hon'ble the Supreme Court in Nasiruddin Vs. Sita Ram reported in 2005 I.L.D(C)-682=AIR 2003 SC-1543, that the provisions of Section 5 of the Limitation Act are not applicable to such situations, and therefore, the delay in depositing the deficit amount of Rs. 65/- cannot be condoned, and thus the application had been rejected.

In my view irrespective of the question as to whether the mistake in depositing lesser amount was bonafide, or not, so also irrespective of the question as

to whether it was the bonafide mistake of the appellant, or his counsel, the fact does remain, that the bonafide can be taken into account only for the purpose of exercising discretion, as to whether the delay should be condoned or not. Admittedly when, in view of the judgment of Hon'ble the Supreme Court in Nasiruddin's case, the provisions of Section 5 of the Limitation Act are not at all applicable, obviously the delay cannot be condoned, and therefore, presence, or absence of bonafides is a wholly irrelevant factor. Therefore, neither the order dt. 13.5.2005 can be found fault with, nor the alleged mistake is of any relevance. The fact does remain, that admittedly the compliance of Section 13(4) of the Act has not been made. Consequences are writ large, viz. in view of the judgment in Ramdev Kajaria's case, irrespective of the fact as to whether the defence is struck off, or not, the defendant cannot be held entitled to the benefit of Section 13(6) of the Act, and has rightly been held to be so by the learned courts below.

Thus, the appeal does not involve any substantial question of law, and has no force, and is, therefore, dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives

an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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